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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ELIA RODRIGUEZ

Case No. C07-1818 MJP

9 Plaintiff,

10 vs.

ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

11 UNITED STATES POSTAL
12 SERVICE, et al.,

13 Defendants.

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15 This matter comes before the Court on Defendants' motion for summary judgment and
16 motion to dismiss Defendant United States Postal Service. (Dkt. No. 28.) The Court has
17 analyzed the motion, the response (Dkt. No. 35), the reply (Dkt. No. 39), and all other
18 pertinent documents in the record. For the reasons set forth below, the Court DENIES
19 Defendants' motion for summary judgment. Furthermore, the Court GRANTS Defendants'
20 motion to dismiss Defendant the United States Postal Service.

21 **Background**

22 On July 12, 2004, Plaintiff Elia Rodriguez slipped and fell at the U.S. Post Office
23 located at Third and Union in Seattle. (Rodriguez Tr. at 31:3-14, 32:7-12). Between 8:30 and
24 9:00 a.m. that morning, Ms. Rodriguez arrived at the Post Office to pick up mail for her
25 employer, the Keefe Law Firm, from a self-service P.O. box. (Id.) She regularly picked up
the mail for the law firm from the Midtown Post Office. As she approached the self-service

1 box on the day of her accident, she stepped on a slippery, wet substance and fell on her right
2 side. (Id. at 34:9-15; 35:4-5.)

3 The self-service boxes are located in an area of the post office that cannot be seen
4 from any postal employee workstation. (Adams Decl. at ¶ 2.) The boxes are located in two
5 dead-end hallways that run off the main lobby. (See Stahman Decl., Ex. D.) The Post
6 Office has had issues with homeless individuals urinating in self-service areas of the building.
7 (Nguyen Decl. at ¶ 7.) Postal employees supervise the area by conducting periodic sweeps.
8 (Adams Decl. at ¶ 2.)

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10 There are two descriptions of the liquid that caused Ms. Rodriguez's fall. When
11 completing her accident report on July 12, 2004, Ms. Rodriguez wrote that the substance
12 appeared to be a "puddle of urine." (Stahman Decl., Ex. B.) Similarly, in another claim form
13 dated July 05, 2006, Ms. Rodriguez wrote that the substance she slipped in appeared to be
14 urine. (Stahman Decl., Ex. C.) The Post Office's "Accident Investigation Worksheet" also
15 indicates the wet substance "looked like urinate from a homeless person." (Stahman Decl.,
16 Ex. D.) However, in her deposition taken on August 15, 2008, Ms. Rodriguez stated the
17 substance was not urine and that, based on her previous observations of floor polishing, she
18 suspected the gel-like substance to be floor wax. (Rodriguez Tr. at 39:2-13, 40:11-14.)

19 Discussion

20 I. Summary Judgment Standard

21 Summary judgment is not warranted if a material issue of fact exists for trial. Warren
22 v. City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), cert. denied, 516 U.S. 1171 (1996).
23 The underlying facts are viewed in the light most favorable to the party opposing the motion.
24 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). "Summary
25 judgment will not lie if . . . the evidence is such that a reasonable jury could return a verdict

1 for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The
2 party moving for summary judgment has the burden to show initially the absence of a genuine
3 issue concerning any material fact. Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 (1970).
4 However, once the moving party has met its initial burden, the burden shifts to the nonmoving
5 party to establish the existence of an issue of fact regarding an element essential to that
6 party’s case, and on which that party will bear the burden of proof at trial. Celotex Corp. v.
7 Catrett, 477 U.S. 317, 323-24 (1986). To discharge this burden, the nonmoving party cannot
8 rely on its pleadings, but instead must have evidence showing that there is a genuine issue for
9 trial. Id. at 324.

11 II. Negligence Claim under the FTCA

12 The Federal Tort Claims Act provides that the United States is liable for the
13 negligence of federal employees acting within the scope of their employment. 28 U.S.C. §
14 2679(b)(1). This Court applies Washington negligence law because it is “the place where the
15 act or omission occurred.” 28 U.S.C. § 1346(b)(1). To prove a claim for negligence in
16 Washington, a plaintiff must demonstrate “(1) the existence of a duty to the complaining
17 party, (2) breach of that duty, (3) a resulting injury, and (4) that the breach was the proximate
18 cause of the injury.” Reynolds v. Hicks, 134 Wn.2d 491, 495 (Wn. 1998)(citations omitted).
19 Washington abides by the common law distinctions between invitees, licensees, and
20 trespassers when determining what duty a landowner owes to a person entering real property.
21 Kamla v. Space Needle Corp., 147 Wn.2d 114, 125 (Wn. 2002)(citations omitted). The
22 parties agree that, because Ms. Rodriguez came to the Post Office for business purposes, she
23 is an invitee. (Dkt. No. 28 at 5-6; Dkt. No. 35 at 10.)

25 For business invitees, Washington adopts the test articulated in the Restatement:

1 A possessor of land is subject to liability for physical harm caused to his [or
2 her] invitees by a condition on the land if, but only if, he [or she]:
3 (a) knows or by the exercise of reasonable care would discover the condition,
4 and should realize that it involves an unreasonable risk of harm to such
5 invitees, and
6 (b) should expect that they will not discover or realize the danger, or will fail
7 to protect themselves against it, and
8 (c) fails to exercise reasonable care to protect them against the danger.

9 Iwai v. State, 129 Wn.2d 84, 93-94 (Wn. 1996)(quoting Restatement (Second) of Torts §§
10 343, 343A (1965)). The Court will first analyze whether the Post Office knew or should have
11 known of the existence of the dangerous condition, then turn to the reasonableness of the Post
12 Office's actions.

13 a. Actual or Constructive Notice

14 Generally, a plaintiff must show "(1) the unsafe condition was caused by the
15 proprietor or its employees or (2) the proprietor had actual or constructive knowledge of the
16 dangerous condition." Coleman v. Ernst Home Center, Inc., 70 Wn.App. 213, 217 (Wn. App.
17 1993); see also Fredrickson v. Bertolino's Tacoma, Inc., 131 Wn.App. 183, 189 (Wn. App.
18 2005). As a preliminary matter, Plaintiff does not argue the Post Office created the hazard.
19 (See Dkt. No. 35 at 10-11.)

20 Plaintiff argues that the Post Office's familiarity with past instances of homeless
21 urination in the self-service area leads to the conclusion that "the condition was . . . known by
22 the post office management." (Dkt. No. 35 at 11, 14-15.) This argument, however, reads the
23 concept of actual notice too broadly. The past observations have no bearing on whether the
24 employees had actual notice of any urine in the self-service area on the morning of the
25 accident. In any case, Plaintiff offers no evidence to controvert Mr. Adams's statement that
he was unaware of the puddle. (See Adams Decl. at ¶ 8.) From the record, no material issue
of fact exists with respect to Defendants' actual notice.

1 The issue of constructive notice is, however, another matter. A business owner has
2 constructive notice where the offensive condition has existed long enough to afford an owner
3 exercising ordinary care the opportunity to eliminate the danger. Fredrickson, 131 Wn. App.
4 at 189 (citations omitted). “The decisive issues [when analyzing constructive notice]. . . are
5 the length of time the condition is present and the opportunity for discovery under the
6 circumstances provided.” Coleman, 70 Wn.App. at 220 (further noting that the issue of
7 constructive notice is generally one for the trier of fact). Mr. Adams states he had not seen
8 hazard during any previous sweep; however, according to his own deposition testimony, he
9 had not made any sweep that day prior to Ms. Rodriguez’s fall. (Adams Decl. at ¶ 8; Adams
10 Tr. at 18:22-24.) Mr. Adams surmises that the liquid was “pretty fresh” because it was “still
11 liquefied” and had a “pretty strong aroma.” (Adams Tr. at 37:18-20.) On this evidence,
12 Defendants argue the hazard could not have been in place long enough for the purposes of
13 constructive notice. (Dkt. No. 28 at 8.) Defendants’ argument fails because it ignores several
14 facts in the record on this issue. For example, Ms. Rodriguez states that she has seen Postal
15 employees “squirting something” sticky on the floors in the morning around 7:30 as they
16 polish and clean them. (Rodriguez Decl. at ¶ 4.) The morning of her fall, she saw a
17 maintenance employee polishing the floor at the other end of the Post Office and believes the
18 employee had worked his way from one end of the building to the other. (Id.; Rodriguez Tr.
19 at 63:1-17.) The implication is that the hazard could have been in place as early as 7:30 in the
20 morning. Viewing the evidence a light most favorable to the non-moving party, there is a
21 factual dispute as to Defendants’ constructive notice. Thus, summary judgment is
22 inappropriate.
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1 Because the Court finds there are material disputes on the issue of constructive notice,
2 it need not rule on the applicability of the Pimentel self-service exception at this time. See
3 Coleman, 70 Wn.App. at 217.

4 b. Reasonable Care

5 For invitees, a business must maintain its premises in a reasonably safe condition. See
6 Zenkina v. Sisters of Providence in Washington, Inc., 83 Wn.App. 556, 561 (Wn. App. 1996).

7 Whether a business owner has maintained the premises in a reasonably safe condition is a
8 fact-intensive inquiry that “depends upon the nature of the business conducted and the
9 circumstances surrounding the particular situation.” Bradt v. Market Basket Stores, Inc., 72
10 Wn.2d 446, 451 (Wn. 1967); see also Escobar v. Burger King, 110 Wn.App. 1011 (Wn. App.
11 2002). Defendants claim that they are entitled to summary judgment on this issue because
12 Postal Service employees monitor the area and clean up hazards once they are discovered.
13 (Dkt. No. 28 at 9.) There are numerous facts in the record that place the reasonableness of the
14 Post Office’s practices in question. Defendants concede that the P.O. boxes are in an area
15 “not visible from any employee workstation.” (Dkt. No. 28 at 7; see also Adams Decl.,
16 diagram). The “Accident Investigation Worksheet” completed by the branch manager
17 indicates that, even with the periodic sweeps, employees “cannot keep-up with homeless
18 people using [the] lobby for their personal needs.” (Stahman Decl., Ex. D.) The
19 reasonableness of the Post Office’s precautions presents an issue for trial.

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22 III. Claims Against Defendant United States Postal Service

23 Defendants further ask the Court to dismiss Ms. Rodridguez’s claims against the
24 United States Postal Service because agencies may not be sued under the FTCA. (Dkt. No.
25 28.) Plaintiff’s response is silent on this issue. The Court agrees with Defendants that the
“United States is the only proper defendant in an FTCA action.” Lance v. United States, 70

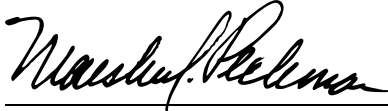
1 F.3d 1093, 1095 (9th Cir. 1995); see also Woods v. U.S., 720 F.2d 1451, 1452 n.1 (9th Cir.
2 1983). Defendant the United States Postal Service should be dismissed.

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4 **Conclusion**

5 The disputed facts in this matter render summary judgment inappropriate. As such,
6 Defendants' motion for summary judgment is DENIED. Defendant United States Postal
7 Service may not be sued under the FTCA and Plaintiff's claims against USPS are
8 DISMISSED.

9 The Clerk is directed to send a copy of this order to all counsel of record.

10 DATED this 28th day of January, 2009.

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14 Marsha J. Pechman
15 United States District Judge
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